IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of :	)	
	)	Confirmation No. 8892
Jeffrey L. HIRKA et al.	)	
	)	Group Art Unit: 3628
Serial No.: 09/655,886	)	
	)	Examiner: CHENCINSKI, Siegfried E.
Filed: September 6, 2000	)	
	)	
Docket No.: 47004.000084	)	

For: SYSTEM AND METHOD FOR LINKED ACCOUNT HAVING SWEEP FEATURE

Mail Stop ***Appeal Brief - Patents***
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

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APPEAL BRIEF

Sir:

Appellants' Appeal Brief in connection with the above-captioned patent application (hereinafter "the present application") is hereby submitted in triplicate. The requisite fee in accordance with 37 C.F.R. § 41.20(b)(2) is enclosed. It is respectfully submitted that this Appeal Brief is timely filed in support of the Notice of Appeal filed on February 16, 2006. Each item required by 37 C.F.R. § 41.37 is set forth below. Appellants believe that no additional fees are deemed necessary, however if there are any deficiencies, please charge the undersigned's Deposit Account No. 50-0206.

In response to the Office Action dated November 17, 2005, rejecting pending claims 1-51, Appellants respectfully request that the Board of Patent Appeals and Interferences reconsider and withdraw the rejection of record, and allow the pending claims, which are attached hereto as Appendix A.

I. REAL PARTY IN INTEREST

The Appellants, Jeffrey L. Hirka and Steven J. Fox, are the Applicants in the above-identified patent application. The Appellants have assigned their entire interest in the above-identified patent application to First USA Bank, NA (now part of JPMorgan Chase & Co.), having a place of business at Three Christina Center, 201 North Walnut Street, Wilmington, Delaware 19801.

II. RELATED APPEALS AND INTERFERENCES

The Appellants, the Appellant's legal representative, and the Assignee are not aware of any other appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS

Claims 1-51 are pending in the above-identified patent application. Claims 1-51 were rejected in an Office Action dated November 17, 2005. The rejection of claims 1-51 is hereby appealed.

Claims 1-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,644,727 to Atkins (hereinafter "Atkins") in view of U.S. Patent No. 6,266,623 to Schein et al. (hereinafter "Schein").

IV. STATUS OF AMENDMENTS

The above-identified patent application was filed on September 6, 2000. A first Office Action (Paper No. 5) was issued on December 29, 2003, rejecting claims 1-47. On March 9, 2004, an Amendment was filed in response to the first Office Action, in which an amendment was made to correct a grammatical error in the Abstract. On March 30, 2004, a Supplemental

Amendment was filed, adding new claims 48-51. A Final Office Action (Paper No. 20040714) was issued on July 21, 2004, rejecting claims 1-51. On September 20, 2004, a Request for Reconsideration (without amendment) was filed in response to the Final Office Action. An Advisory Action (Paper No. 20040928) was issued on October 6, 2004, maintaining the final rejection of claims 1-51. On October 21, 2004, a Notice of Appeal was filed. On February 16, 2005, an Appeal Brief was filed.

An Office Action was issued on November 17, 2005, which re-opened prosecution for the present application and rejected claims 1-51 for obviousness. On February 16, 2006, another Notice of Appeal was filed, together with Appellants' response to the new grounds of rejection. No amendment has been made in the February 16, 2006 filing.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, as set forth in claim 1, and as described in the specification of the above-identified patent application, is directed to a system for processing electronic transactions. The system may comprise: a first interface (136) to at least one cash account (160) against which charges incurred through use of a linked account instrument are drawn; a second interface (138) to at least one credit account (140) used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and an authorization server (130), communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, and performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument. *See* present application, pp. 6-7 and Figures 1, 3 and 4a-c.

The present invention, as set forth in claim 24, and as described in the specification of the above-identified patent application, is directed to a method for accessing funds in at least one cash account. The method may comprise the steps of: interfacing to an authorization server (130) to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account (160); and performing sweeps of said at least one cash account to determine whether charges incurred through use of the linked account card can be satisfied by funds in said at least one cash account, or charged against at least one designated backing credit account (140). *See* present application, pp. 6-7 and Figures 1-3 and 4a-c.

The present invention, as set forth in claim 50, and as described in the specification of the above-identified patent application, is also directed to a method for accessing funds in at least one cash account (160). The method may comprise the steps of: interfacing to an authorization server (130) to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account (160); and performing at least one automatic withdrawal from said at least one cash account (160) to satisfy at least part of the charges incurred through use of the linked account instrument. *See* present application, pp. 6-7 and Figures 1-3 and 4a-c.

The present invention, as set forth in claim 51, and as described in the specification of the above-identified patent application, is further directed to a system for processing electronic transactions. The system may comprise: a first interface (136) to at least one cash account 160 against which charges incurred through use of a linked account instrument are drawn; a second interface (138) to at least one credit account 140 used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred

through the use of the linked account instrument; and an authorization server (130), communicating with the first interface (136) and the second interface (138), the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, performing sweeps wherein funds are withdrawn from said at least one cash account (160) at predetermined times, and, if funds are not available from said at least one cash account, using the at least one credit account (140) until the at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument. *See* present application, pp. 6-7 and accompanying figures.

VI. ISSUE TO BE REVIEWED ON APPEAL

The issue to be reviewed by the Board is whether, under 35 U.S.C. § 103(a), claims 1-51 are unpatentable over U.S. Patent No. 5,644,727 to Atkins (hereinafter "Atkins") in view of U.S. Patent No. 6,266,623 to Schein et al. (hereinafter "Schein").

VII. ARGUMENT

A. Summary of Argument

Appellants respectfully submit that the rejection of claims 1-51 under 35 U.S.C. § 103(a) is improper. Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Patent Office can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of references. Id. As stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Since the cited references fail to teach or suggest all the limitations in any of the appealed claims 1-51,

Appellants respectfully submit that the Examiner has not met the burden of proof in establishing obviousness of the claimed invention.

B. Overview of the Present Invention and the Cited References

Before discussing the pending claims, a brief summary of a preferred embodiment of Appellants' invention is provided in order to highlight some of its advantageous characteristics. An overview of the Atkins and Schein references is also provided.

The present invention relates to a *linked account instrument*. A linked account instrument, as described in Appellants' specification, is typically a credit-card-like financial instrument issued to a cardholder that, by itself, provides access to at least two accounts that are linked, *e.g.*, at least one cash account linked to at least one credit account. The linked account instrument, also referred to as "a linked account card," may be a magnetically encoded plastic card associated with at least one cash account *and* at least one credit account, according to a preferred embodiment of the invention. *See* present application, p. 6, ll. 10-13.

The at least one credit account provides overdraft protection to the at least one cash account according to preferred embodiments of the invention. *See* present application at pp. 3-4. Charges incurred through the use of the linked account instrument are first covered by the at least one cash account. If there are insufficient funds in the at least one cash account, the charges are covered by the at least one credit account, and sweeps may then be performed on the at least one cash account in search of funds to cover the charges. *See* present application at pp. 3-5.

The linked account instrument is issued to a customer by a financial institution. To set up the linked account card account, according to an exemplary embodiment of the invention, a potential cardholder is asked to designate a demand deposit account (DDA) or other banking account that will provide the cash funds for purchases made with the linked account card. Present application at p. 8, ll. 3-5. In setting up the linked account card account, the potential

cardholder is also asked to provide a designated credit or other account to handle overdrafts. This may be an existing credit card or other account. Present application at p. 8, ll. 10-12. After the cash account and the credit account have been identified and verified, the linked account card account can then be established. Present application at p. 8, ll. 14-16. Thus, at the time the linked account instrument is issued, it is associated with a cash account linked to a credit account.

Atkins, by contrast, is directed to:

> a method and apparatus for effecting an improved personal financial analysis, planning and management system incorporating a digital system of electronic exchange, investment and borrowing with means of implementing, coordinating, supervising, planning, analyzing and reporting upon an array of asset accounts such as investments and liability accounts such as credit facilities. The apparatus comprises a wide area network of digital computation and communication instruments, including various personal digital assistants that may be linked to central processors and data storing facilities.

See Atkins, col. 7, ll. 19-30 and Figure 2.

Atkins in particular teaches a financial planning tool based on a Home Owner's Management Equity (HOME)™ mortgage, the primary purpose of which is to provide an individual the opportunity to make increased investments in designated asset accounts instead of decreasing the principal of the mortgage. *See* Atkins, col. 13, ll. 52-67.

Figure 2 of Atkins shows the components of the HOME Account™ system, including a central computer 22 that is connected to, among other things, a user's personal computer 24, a user's personal digital assistant 34, a user's interactive TV 50, branch terminals 26, 28 of one or more financial institutions, an account manager's personal computer 30, and an account supervisor's minicomputer 32. *See* Atkins col. 31, line 44 - col. 32, line 7. The user can communicate with the system, for example by using client personal computer 24, to inquire

about the status of her account, check news or financial information, or initiate a transaction. Atkins, col. 32, ll. 31-37. The Atkins system can be used with *existing* credit cards, credit card systems, POS terminals, ATM networks, and credit card and check authorization systems. Atkins, col. 10, ll. 1-5.

Schein is directed to a global standard messaging system and process for allowing customers to access a full range of global financial services using a variety of access points. The system includes a global communications network that integrates customer information and makes the information accessible from remote locations. The system includes a comprehensive database assembled from diverse sources and systems and processes for retrieving the information from the central database in a meaningful and practical way. The system includes several levels of access communications as well as built-in flexibility so that it can be accessed by a variety of remote systems of varying degrees of complexity and language. *See* Schein, Abstract.

The only part of the Schein reference that might be relevant to the present application is in the "Background of the Invention" section, where it describes attempts to provide linked account structures in the past. *See* Schein, col. 4, line 45 - col. 5, line 57.

C. Independent Claim 1 is Patentable over Atkins and Schein

Appellants submit, with respect, that the Atkins-Schein combination does not disclose each and every element of claim 1.

1. Neither Atkins Nor Schein Teaches or Suggests "A Linked Account Instrument"

Neither Atkins nor Schein teaches or suggests a linked account instrument, as recited in claim 1.

It is not clear whether the Examiner agrees that Atkins does not disclose "a linked account instrument." While the Examiner concedes that "Atkins does not explicitly disclose the use of linked account instrument" (November 17, 2005 Office Action, hereinafter "Office Action," page 12), the Examiner also alleges that "the linked accounts are obviously inferred" from Atkins' disclosure (Office Action, page 3). It appears that the Examiner considers the "linked account instrument" to be disclosed either implicitly in Atkins or explicitly in Schein. Appellants respectfully submit that the Examiner's reliance on Atkins and Schein is misplaced.

In rejecting claim 1, the Examiner asserts:

> "The linked accounts are obviously inferred since the features disclosed by Atkins could not operate without linkage. However, Atkins does not explicitly state linked accounts, even though their use is obvious and essential because the account sweeps taught by Atkins are part of Atkins' account linkage system." Office Action, page 3 (emphasis added).

It should be noted here that the Examiner does not use the term "linked account instrument" at all. Rather, the Examiner only speaks of "linked accounts," "account linkage system," or "a linked accounts system," as if these terms were equivalent to "a linked account instrument" as recited in claim 1. It is true that, to have a linked account instrument, there must be two or more financial accounts that are somehow "linked" together. It does not follow, however, that linked accounts automatically require a linked account instrument. In other words, even if the Examiner had correctly concluded that Atkins discloses linked accounts, the inquiry should not have ended there. Existence of linked accounts is just a necessary (but not sufficient) condition for the existence of a linked account instrument. It is quite obvious that multiple financial accounts may be "linked" in many different ways that do not involve any linked account instrument as presently claimed. A logical next step in the inquiry is to ask, for example, the following questions:

— *How are the linked accounts linked?*

— *Do the linked accounts bear the same relationship as presently claimed?*

— *Are the linked accounts indeed linked through a linked account instrument?*

Only being able to infer "linked accounts" from Atkins, the Examiner has fell short of proving that Atkins actually contemplates the use of "a linked account instrument" to link different accounts. At best, Atkins discloses the management of multiple accounts. However, mere management of multiple accounts, which is well known in the art, does not in any way teach or suggest a linked account instrument. Therefore, Atkins does not disclose any linked account instrument, as recited in Appellants' claim 1.

Schein does not disclose "a linked account instrument" any more than Atkins does.

According to the Examiner, "Schein further teaches a linked accounts system used by Citibank (Col. 4, ll. 45-56)." Office Action, page 3 (emphasis added). The Examiner further asserts the following:

> "Schein teaches that linked online transaction accounts were pioneered by Citibank in 1976 and 1977, including the linkage to a line of credit to back up a transaction account, such as a checking account (Col. 4, ll. 45-56). Schein discloses that such offerings proceeded to spread throughout the banking world in the ensuing years. Schein teaches the story of Citibank's continuing building upon this pioneering concept with increasingly sophisticated and flexible linked account offerings (Col. 5, ll. 6-57)." Office Action, page 5 (emphasis added).

Even if they were given full credit, these assertions would only prove the existence of "linked accounts," not "a linked account instrument" as presently claimed. Indeed, the Examiner does not cite any passage from Schein that mentions a linked account instrument.

It is true that Schein speaks of "linked accounts" explicitly. However, the inquiry does not end here. The issue remains as to whether Schein discloses linking multiple accounts in the same way or via the same instrument as claimed in the present invention. Apart from the fact

that multiple accounts are "linked," Schein does not reveal any specifics on transactional features, such as how these account are linked or what the relationships among the accounts are.

Reading Schein closely, it is not difficult to find out that the Citibank linked accounts were offered for reasons quite different from Appellants' invention. Appellants' invention allows a customer to use a linked account instrument to access a cash account and a credit account that are linked together. The Citibank linked accounts, however, were offered for the purposes of cross-selling financial products and consistent presentation of banking data (or statements). For example, the first linked accounts offered by Citibank were "mechanically linked together" (Schein, col. 4, line 48) and <u>mainly for the purpose of cross selling new accounts to customers</u> (Schein, col. 4, ll. 35-44). The CITIGOLD Account system focused on <u>integration and consistent presentation</u> across entire range of customer access points. Schein, col. 5, ll. 17-19. The CITIONE Account linked customer's accounts together <u>so that the financial institution's different products and services could appear together on a customer's statement</u>. Schein, col. 5, ll. 33-36. The Citibank Money Management Account (CMMA) allowed banking customers the convenience of <u>"one-stop shopping"</u> and provided <u>consistent presentation</u>. Schein, col. 5, ll. 51-53. Considering the emphasis on cross-selling and statement presentation, it is not surprising that there is no disclosure of any linkage or interaction among the "linked accounts" in terms of transactional features.

In describing "linked accounts," Schein does mention "credit cards" in the following passages:

> "With the CITIONE account, customer's accounts could be linked together randomly so that the financial institution's different products and services could be linked together and appear on a customer's statement. This was done on an ad hoc basis depending on a customer's desires. The basic features available in the United States were checking, day-to-day savings, and insured money

> market accounts, certificates of deposit (CDs) and <u>credit cards</u>." Schein, col. 5, ll. 33-40 (emphasis added).
>
> "The CMMA allows customers to link separate accounts and to perform a wide variety of financial transactions including traditional banking activities, brokerage activities and loan activities. Again, individual customer accounts could be linked to form an ad hoc mixture of product features. The system categorized those features within categories such as "your money in the bank," "securities," "borrowing and loan," "<u>credit cards</u>" and the like. Among other things, the CMMA allows banking customers the convenience of "one-stop" shopping. Efforts were also made to provide consistent presentation." Schein, col. 5, ll. 43-53 (emphasis added).

From the context, it is apparent that, by "credit cards," Schein actually meant "credit accounts." For example, in the first passage, "credit cards" is listed with four other types of financial accounts, namely, checking, day-to-day savings, insured money market accounts, and certificates of deposit (CDs). In the second passage, "credit cards" are listed with other financial services such as "your money in the bank" (personal banking), "securities" (investment), and "borrowing and loan" (consumer loans). There is no suggestion that Schein or anyone else contemplates the use of credit cards as "a linked account instrument" as presently claimed.

For the foregoing reasons, Atkins and Schein fail to disclose "a linked account instrument" as recited in claim 1.

2. Neither Atkins Nor Schein Teaches or Suggests "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account"

Claim 1 recites "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account." This limitation reflects at least one aspect of the relationship (or linkage) between "the at least one cash account" and "the at least one credit account." That is, the at least one credit account provides overdraft protection to the at least one cash account.

The Examiner does not contend that Schein discloses this limitation. However, the Examiner asserts that "Atkins' basic system and method teaches at its core the principle of automated credit backup of cash transaction accounts." Office Action, page 3. The Examiner's reliance on Atkins here is improper.

First of all, the Examiner probably has confused a "line of credit" with a "credit account." When discussing the claim limitation of backing a cash account with a credit account, the Examiner appears to use the terms "line of credit" (or "credit") and "credit account" (or "credit facility") interchangeably. For example, in page 3 of the Office Action, regarding claims 1 and 24, the Examiner speaks of "the principle of automated <u>credit</u> backup of cash transaction accounts." In page 5, the Examiner refers to "the linkage to <u>a line of credit</u> to back up a transaction account." In page 6, the Examiner speaks of "the cumulative dollar limit established for overdrafts in the demand account the <u>credit facility</u> backs up." In page 7, regarding claims 13 and 36, the Examiner mentions "the employment of the <u>credit back-up facility</u>." In page 9, regarding claims 23 and 47, the Examiner refers to "a pre-established back-up <u>credit facility</u>."

It is worth pointing out that a line of credit is different from a credit account. A line of credit is "an arrangement between a financial institution (usually a bank) and a customer establishing a maximum loan balance that the bank will permit the borrower to maintain."[1] When a line of credit is associated with a customer's banking account (e.g., a checking or savings account), the customer may be able to spend or otherwise withdraw more money than the cash balance of the banking account. As such, the banking account would take on some characteristics of a credit account. However, it is important to note that a line of credit is not itself a credit account or the equivalent of a credit account. First, "linking" a line of credit to a

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[1] Dictionary definition from <u>http://www.investopedia.com/terms/l/lineofcredit.asp</u>.

banking account does not involve an additional account for the customer, but simply imposes an overdraft limit on the existing banking account. On the other hand, linking a credit account to a cash account, as recited in the pending claims, involves at least two separate accounts. Second, when two accounts are linked, sweeps may be performed to determine whether the cash account contains sufficient funds to cover the balance of the linked credit account. When a line of credit is "linked" to a banking account, the sweep function would not be necessary because the linkage between the line of credit and the banking account does not provide another account that can be swept for funds. The line of credit only kicks in when the banking account balance reaches zero. Thus, if the account holder is already borrowing against the line of credit, there is no need to sweep the banking account. Third, it is typically the same financial institution that both hosts the banking account and provides the line of credit. While here, in the present invention, the use of a credit account to back up a banking account does not require that both accounts be hosted by a same financial institution.

Notwithstanding the difference between a line of credit and a credit account, Atkins does not teach "the principle of automated <u>credit</u> backup of cash transaction accounts" as the Examiner has alleged, whether the word "credit" refers to a line of credit or a credit account. Atkins does refer to "home equity line of credit," "personal line of credit," "individual's line of credit," "credit accounts" and "credit facilities." However, Atkins merely mentions these items as examples of liabilities to be balanced with assets in Atkins' personal financial management system. Atkins does not describe the use of any of these items to back up or provide overdraft protection for a cash account or banking account. Atkins uses the word "back" as a verb only once, in the context of "mortgage-backed securities." Atkins, col. 11, line 24. Atkins uses the word "overdraft" only once, in the context of describing irregularities such as repeated overdrafts

concerning the individual's account. Atkins, col. 46, line 40. Appellants recognize that Atkins provides a lengthy and comprehensive description that covers many aspects of the operation and management of financial accounts. Yet, the fact that Atkins generally discloses the management of multiple financial accounts does not mean Atkins has disclosed or even contemplated every relationship or transaction possible among the different accounts. The Examiner asserts that "Atkins teaches a wide variety of options which a financial institution and a customer choose from." Office Action, page 3. However, the Examiner fails to point out exactly which of those "wide variety of options" covers the use of a credit account to back up a cash account as presently claimed.

In fact, Atkins teaches away from the use of at least one credit account "to back said at least one cash account in the event of insufficient funds in said at least one cash account." In Atkins, *the amount available for borrowing must be less than the value of the asset accounts used for collateral. See* Atkins at col. 11, ll. 31-35 ("The home owner's total assets, as adjusted to provide the financial institution with a measure of security for its lending, *must always be greater than some imposed minimum standard or minimum borrowing power.*") (emphasis added); Atkins at col. 16, ll. 38-44 ("Other dynamic aspects of the HOME Account™ system maintain a constant loan to value ratio [mortgage amount/home value amount] as the value of the home increases over time. By advancing additional loans such as home equity loans secured by the home and one or more asset accounts, *the loan to value ratio is always maintained at a constant percentage.* In a preferred embodiment, such percentage is 80%") (emphasis added). These teachings in Atkins teach away from Appellants' claim 1 combination, which recites "at least one credit account used to back said at least one cash account *in the event of insufficient*

funds in said at least one cash account." Accordingly, Atkins does not disclose this claimed feature.

For the foregoing reasons, Atkins and Schein fail to disclose "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account" as recited in claim 1.

3. Neither Atkins Nor Schein Teaches or Suggests "performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument"

Claim 1 recites "performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument." The "sweep" or "automatic withdrawal" function disclosed in the present application involves automatic reconciliation between a cash account and a backing credit account. According to exemplary embodiments of the present invention, a "sweep" of a cash account typically involves an automated clearing house (ACH) type or similar request that is initiated by a financial institution. For example, "[a]t a predetermined time, such as at, near or just after the end of each day, the cardholder's designated cash account may be swept via an automated clearing house to determine whether adequate funds exist to cover all of the day's charges accumulated through use of the linked account card." Present application, p. 10, ll. 23-26. "If adequate funds are present in the cardholder's designated cash account 160 at the time of reconciliation, the funds may be withdrawn from the cash account 160 in step 418 and the authorization server 130 may reset the daily spending limit to its full amount in step 422 for the following day." Present application, p. 11, ll. 1-4.

If the cash account does not have sufficient funds, the overdraft amount may be satisfied by the linked credit account. "After the placing of the overdraft on the credit account, a check or sweep may be automatically made against the cash account at 12:01 a.m. the next day or other later time to check for sufficient funds to cover the extended overdraft credit." Present application, p. 4, ll. 3-6. "If adequate funds become available during one of the subsequent sweeps, they may be withdrawn from the cash account and the credit account may be cleared at the earliest possible opportunity. This provides advantages over a traditional debit card account, where a cardholder may have to pay off the overdraft by visiting the bank or mailing a check to the bank." Present application, p. 4, ll. 24-29.

The Examiner does not contend that Schein discloses "sweeps" as recited in claim 1. Although Schein does mention that a central feature of the CITIGOLD Account is "sweeping funds into a money market account on a daily basis," such sweeping feature is provided between an investment account and a cash account, therefore it is quite different from an automatic reconciliation between a cash account and a backing credit account as presently claimed. The sweeping feature in CITIGOLD Account probably involves a scheduled fund transfer from a cash account to an investment account (e.g., money market account), wherein the two accounts are not associated through any overdraft protection mechanism.

The Office Action cites the following portion of Atkins as allegedly disclosing "sweeps":

> "The suggested prioritization function may recommend various forms of "sweeping" or allocating funds from or to one or more asset or liability accounts." Atkins, col. 7, ll. 42-45.

In addition to the cited passage, the word "sweep" also appears in the follow portions of Atkins:

> "If desired, the system automatically manages a client's budgetary and financial affairs through a system of expert *sweeps* based on a client's preferences." Atkins, Abstract.

> "Such expert can provide her with an integrated financial plan that is frequently updated together with financial management tools such as expert account *sweep* features that automatically allocate funds in accordance with the plan." Atkins, col. 8, ll. 40-44.
>
> "This subsystem incorporates automatic or expert *sweep* features between asset and liability accounts that provide a means of implementing, coordinating, supervising, planning, analyzing, and reporting on investments in an array of assets and liabilities from a variety of credit facilities." Atkins, col. 13, ll. 25-30.
>
> "By executing PALAP, the system generates a preferred allocation of assets and liabilities based on system default variables and client input comprising variables specified by the individual which may be implemented through the HOME Account™ or MyNet™ systems of automated allocations or account *sweeps*." Atkins, col. 49, ll. 52-58.
>
> "The outputs can be used to establish a system of expert *sweeps* or fund transfers that will either automatically or upon client approval *sweeps* funds from a HOME Account™ sub-account in order to implement the PALAO, PIBO and the individual's personal budget." Atkins, col. 51, ll. 50-54.

However, none of the cited portions, nor any other portion of Atkins, discloses or suggests "performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument" as recited in claim 1. It is respectfully submitted that "all words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (CCPA 1970). It would be improper to focus on a single word in the claim (in this case, the word "sweep") while ignoring the rest of the claimed limitation.

As discussed above, in Atkins, a borrowing limit prevents the extension of credit beyond the value of the asset account. *See e.g.,* Atkins at col. 11, ll. 31-35. Therefore, there is no need in Atkins to "determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument," as recited in claim 1, because

Atkins does not extend the loan in such a case. Accordingly, Atkins does not teach or suggest this claimed limitation.

Since Atkins and Schein fail to disclose all the elements in claim 1, the obviousness rejection of claim 1 based on Atkins and Schein is improper.

D. Independent Claim 24 is Patentable over Atkins and Schein

Claim 24 is a method claim that recites, among other things, "interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument." As discussed above with respect to claim 1, neither Atkins nor Schein teaches or suggests a linked account instrument. At best, Atkins discloses management of multiple accounts, and Schein speaks of "linked accounts" without offering any detail.

Claim 24 also recites "performing sweeps of said at least one cash account to determine whether charges incurred through use of the linked account card can be satisfied by funds in said at least one cash account." As discussed above with respect to claim 1, neither Atkins nor Schein teaches or suggests this claimed feature. For example, Schein discloses a sweeping feature in a completely different context. *See* Schein at col. 5, ll. 11-13. Atkins does not disclose or suggest determining whether charges incurred through use of a linked account card can be satisfied by funds in at least one cash account. Rather, in Atkins, there is no need to make such a determination, since the loan amount in Atkins is kept below a certain percentage, e.g., 80%, of the home value amount. *See* Atkins at col. 16, ll. 37-44.

Claim 24 also recites a designated backing credit account. In Atkins, there is no "backing" credit account that is charged if the funds in the cash account are insufficient for a particular transaction. Rather, the loan amount is kept below a certain percentage of the home value amount. *See e.g.,* Atkins at col. 11, ll. 31-35. Schein refers to line of credit services being

associated with banking accounts, but does not disclose the backing of a cash account with a credit account.

For all of the foregoing reasons, claim 24 is patentable over Atkins and Schein.

E. Independent Claim 50 is Patentable over Atkins and Schein

Claim 50 recites a method for accessing funds in at least one cash account. Claim 50 recites, among other things, "interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument." As discussed above with respect to claim 1, neither Atkins nor Schein teaches or suggests a linked account instrument. At best, Atkins discloses management of multiple accounts, and Schein speaks of "linked accounts" without offering any detail.

Claim 50 also recites "performing at least one automatic withdrawal from said at least one cash account to satisfy at least part of the charges incurred through use of the linked account instrument." Atkins and Schein do not disclose or suggest this claimed feature, because they do not disclose or suggest a linked account instrument. Schein makes no reference to automatic withdrawal at all, and the Examiner does not cite Schein for this claimed feature. Although Atkins discloses automatic mortgage payment collection (*see e.g.*, Atkins, col. 42, ll. 37-40) and automatic reallocation of assets and liabilities (*see e.g.*, Atkins, col. 48, ll. 40-43), Atkins does not disclose automatic withdrawal from a cash account to satisfy charges incurred through use of a linked account instrument. Further, the automatic withdrawal as contemplated in the present application may be performed quite frequently, which is particularly discouraged by Atkins. In Atkins' system,

> "[t]pically, the designated asset accounts are accounts that are not subject to frequent withdrawal of funds. Thus, these asset accounts may accrue substantial interest and dividend revenue over the term of the mortgage loan and may appreciate in capital value." Atkins, col. 13, ll. 55-59.

Therefore, neither Atkins nor Schein discloses the feature of automatic withdrawal as recited in claim 50.

Accordingly, claim 50 is patentable over Atkins and Schein.

F. Independent Claim 51 is Patentable over Atkins and Schein

Claim 51 recites "a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn." As discussed above with respect to claim 1, neither Atkins nor Schein teaches or suggests a linked account instrument. Therefore, Atkins and Schein cannot render claim 51 obvious.

Claim 51 also recites "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument." Atkins and Schein do not disclose or suggest this claimed feature. In Atkins, there is no credit account used to back said at least one cash account in the event of insufficient funds. Rather, the loan amount in Atkins is kept below a certain percentage of the home value amount so that no backing is required. Schein refers to line of credit services being associated with banking accounts, but does not disclose the backing of a cash account with a credit account. Therefore, Atkins and Schein cannot render claim 51 obvious.

Claim 51 also recites that "if funds are not available from said at least one cash account, using the at least one credit account until the at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument." This feature is not disclosed or suggested in Atkins or Schein. In particular, in Atkins, the amount available for borrowing must be less than the value of the asset accounts used for collateral. *See* Atkins at col. 11, ll. 31-35 ("The home owner's total assets, as adjusted to provide the financial institution with a measure of security for its lending, must always be greater than some imposed minimum

standard or minimum borrowing power."). This teaching in Atkins teaches away from Appellants' claim 51 combination, which recites that "if funds are *not available* from said at least one cash account, using the at least one credit account *until the at least one cash account contains sufficient funds* to cover the charges incurred through use of the linked account instrument." Schein does not disclose such a relationship between a cash account and a credit account as recited in claim 51. Nor does the Examiner contend that Schein discloses this claimed feature. Accordingly, Atkins and Schein cannot render claim 51 obvious.

G. Dependent Claims 2-23 and 25-49 Are Each Separately Patentable Over Atkins and Schein

Claims 2-23 and 25-49 all depend ultimately from one of independent claims 1 and 24. As such, each of these dependent claims contain each of the elements recited in the independent claims. For the reasons stated above, neither Atkins nor Schein teaches or suggests all the elements recited in claims 1 and 24. Thus, for at least the same reasons, Atkins and Schein cannot render claims 2-23 or 25-49 obvious. Additionally, claims 2-23 and 25-49 are each separately patentable over Atkins and Schein for the additional features that each of these dependent claims recites.

1. Claims 2-3 and 25-26

For example, claims 2-3 and 25-26 are each separately patentable because Atkins and Schein fail to disclose a "demand deposit account" as being backed by at least one credit account. In addition, there is no teaching or motivation to modify Atkins to include the feature of at least one demand deposit account. Despite the Office Action's allegation of a cash account being inherent, the operation of Atkins' HOME™ mortgage-based financial planning tool does not require inclusion of a cash account much less a demand deposit account.

2. Claims 9-16 and 32-39

Claims 9 and 32 are each separately patentable because Atkins and Schein fail to disclose the generation of "individual automated clearing house debits" "for each transaction initiated with the linked account instrument." Atkins makes no reference to an automated clearing house debit. In fact, even if automated clearing house debits were contemplated, Atkins would refrain from generating *individual* automated clearing house debits for *each* transaction because Atkins disfavors frequent withdrawal from the asset accounts in its system. *See e.g.,* Atkins, col. 13, ll. 55-59. Neither does Schein make any reference to an automated clearing house debit. Since claims 10-16 and 33-39 all depend from either claim 9 or claim 32, they are all patentable over Atkins and Schein for at least the same reasons. Further, since Atkins and Schein do not disclose or suggest any of the specific rules recited in claims 10-16 or 33-39 for processing the automated clearing house debits against the at least one cash account and the at least one credit account, each of these claims is separately patentable over Atkins and Schein.

3. Claims 17-23 and 40-47

Claims 17 and 40 are each separately patentable because Atkins and Schein fail to disclose a "daily limit" on a cash account against which individual transactions may be authorized. Atkins does not impose a daily limit on its user's spending or borrowing activities. Rather, Atkins provides a measure of security by imposing a loan to value ratio which is not a daily limit at all. *See e.g.,* Atkins at col. 11, ll. 31-35; col. 16, ll. 38-44. Schein mentions line of credit in general but does not disclose a "daily limit" as presently claimed. Therefore, Atkins and Schein cannot render claims 17 or 40 obvious. Since claims 18-23 and 41-47 all depend from either claim 17 or claim 40, they are all patentable over Atkins and Schein for at least the same reasons. In addition, since Atkins does not disclose or suggest any of the additional

limitations recited in claims 18-23 or 41-47, these claims are each separately patentable over Atkins.

VIII. CLAIMS APPENDIX

Appendix A contains a listing of currently pending claims.

IX. EVIDENCE APPENDIX

No Evidence Appendix is included herewith.

X. RELATED PROCEEDINGS APPENDIX

No Related Proceedings Appendix is included herewith.

XI. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that Atkins and Schein fail to render Appellants' claims 1-51 obvious under 35 U.S.C. § 103(a). Accordingly, Appellants respectfully request reversal of the rejection of claims 1-51.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

HUNTON & WILLIAMS, LLP

By: ____________________
Ce Li
Reg. No. L0214

HUNTON & WILLIAMS, LLP
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
Telephone (202) 955-1500
Facsimile (202) 778-2201

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APPENDIX A

1. (Original) A system for processing electronic transactions, comprising:

a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn;

a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and

an authorization server, communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, and performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument.

2. (Original) The system of claim 1, wherein said at least one cash account comprises at least one demand deposit account.

3. (Original) The system of claim 1, wherein said at least one demand deposit account comprises a plurality of demand deposit accounts.

4. (Original) The system of claim 1, wherein said at least one cash account may be held at any financial institution.

5. (Original) The system of claim 1, wherein said at least one credit account comprises a plurality of credit accounts.

6. (Original) The system of claim 1, wherein said at least one credit account may be held at any financial institution.

7. (Original) The system of claim 6, wherein said at least one credit account has an associated credit line at least equal to the predetermined cumulative limit.

8. (Original) The system of claim 1, wherein the authorization server comprises at least one of an account information database, an account balance database, and a transaction history database.

9. (Original) The system of claim 1, wherein individual automated clearing house debits are generated for each transaction initiated with the linked account instrument.

10. (Original) The system of claim 9, wherein the automated clearing house debits are first processed against said at least one cash account via an automated clearing house.

11. (Original) The system of claim 10, wherein the automated clearing house debits are processed against said at least one cash account in the order in which they were generated.

12. (Original) The system of claim 10, wherein each automated clearing house debit is processed against said at least one cash account based on the relative size of its amount.

13. (Original) The system of claim 12, wherein the smallest debit amounts are processed against said at least one cash account first, leaving larger debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

14. (Original) The system of claim 12, wherein the largest debit amounts are processed against said at least one cash account first, leaving smaller debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

15. (Original) The system of claim 10, wherein an entire debit amount is processed against said at least one credit account in the event that there are funds in said at least one cash account that can only cover a percentage of the debit amount.

16. (Original) The system of claim 10, wherein a first percentage of the debit amount is processed against said at least one cash account, and a second percentage of the debit amount is processed against said at least one credit account in the event that there are funds in said at least one cash account that cannot satisfy the entire debit amount.

17. (Original) The system of claim 1, wherein the predetermined cumulative limit is a daily limit, and the authorization server is configured to decline to authorize additional transactions attempted with the linked account instrument once the daily limit has been reached.

18. (Original) The system of claim 17, wherein the authorization server is configured to cease authorizing transactions attempted with the linked account instrument if a first sweep of said at

least one cash account finds insufficient funds to satisfy previous charges incurred through use of the linked account instrument.

19. (Original) The system of claim 18, wherein said at least one credit account used to back said at least one cash account will be cleared if a subsequent sweep of said at least one cash account finds adequate funds to satisfy those funds covered by said at least one credit account.

20. (Original) The system of claim 19, wherein the authorization server is configured to refresh the pre-determined cumulative limit and authorize transactions after said at least one credit account has been cleared.

21. (Original) The system of claim 20, wherein a user of the linked account instrument is charged a fee for use of said at least one credit account.

22. (Original) The system of claim 18, wherein the authorization server is configured to continue to cease authorizing transactions attempted with the linked account instrument if a predetermined number of subsequent sweeps of said at least one cash account fail to find sufficient funds to satisfy the charges incurred through use of the linked account instrument.

23. (Original) The system of claim 17, wherein the authorization server is configured to continue to authorize linked account card transactions up to the predetermined cumulative limit against available credit on the credit account, even if a first sweep of the cash account finds insufficient funds to satisfy previous charges.

24. (Original) A method for accessing funds in at least one cash account, comprising the steps of:

a) interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account; and

b) performing sweeps of said at least one cash account to determine whether charges incurred through use of the linked account card can be satisfied by funds in said at least one cash account, or charged against at least one designated backing credit account.

25. (Original) The method of claim 24, wherein said at least one cash account comprises at least one demand deposit account.

26. (Original) The method of claim 24, wherein said at least one demand deposit account comprises a plurality of demand deposit accounts.

27. (Original) The method of claim 24, wherein step (a) further comprises the step of:
c) holding said at least one cash account at any financial institution.

28. (Original) The method of claim 24, wherein said at least one credit account comprises a plurality of credit accounts.

29. (Original) The method of claim 24, wherein step (b) further comprises the step of:
d) holding said at least one credit account at any financial institution.

30. (Original) The method of claim 24, wherein step (b) further comprises the step of:
e) providing an associated credit line for said at least one credit account that is at least equal to the predetermined cumulative limit.

31. (Original) The method of claim 24, wherein the authorization server comprises at least one of an account information database, an account balance database, and a transaction history database.

32. (Original) The method of claim 24, wherein step (a) further comprises the step of:
f) generating individual automated clearing house debits for each transaction initiated with the linked account instrument, and authorized by the authorization server.

33. (Original) The method of claim 32, wherein step (f) further comprises the step of:
g) processing the automated clearing house debits against said at least one cash account via an automated clearing house.

34. (Original) The method of claim 33, wherein step (g) further comprises the step of:
h) processing the automated clearing debits against said at least one cash account in the order in which they were generated.

35. (Original) The method of claim 33, wherein step (g) further comprises the step of:
i) processing each automated clearing house debit against said at least one cash account based on the relative size of its amount.

36. (Original) The method of claim 35, wherein step (i) further comprises the step of:
j) processing the smallest debit amounts against said at least one cash account first, leaving larger debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

37. (Original) The method of claim 35, wherein step (i) further comprises the step of:
k) processing the largest debit amounts against said at least one cash account first, leaving smaller debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

38. (Original) The method of claim 33, wherein step (g) further comprises the step of:
l) processing an entire debit amount against said at least one credit account in the event that there are funds in said at least one cash account that can only cover a percentage of the debit amount.

39. (Original) The method of claim 33, wherein step (g) further comprises the step of:
m) processing a first percentage of the debit amount against said at least one cash account and a second percentage of the debit amount is processed against said at least one credit account in the event that there are funds in said at least one cash account that cannot satisfy the entire debit amount.

40. (Original) The method of claim 24, wherein the predetermined cumulative limit is a daily limit.

41. (Original) The method of claim 40, wherein step (a) further comprises the step of:
n) ceasing to authorize additional transactions attempted with the linked account instrument once the predetermined cumulative limit has been reached.

42. (Original) The method of claim 41, further comprising the step of:

o) ceasing to authorize transactions attempted with the linked account instrument if a first sweep of said at least one cash account finds insufficient funds to satisfy previous charges incurred through use of the linked account instrument.

43. (Original) The method of claim 42 , further comprising the step of:

p) clearing said at least one credit account if a subsequent sweep of said at least one cash account finds adequate funds to satisfy those funds temporarily covered by said at least one credit account.

44. (Original) The method of claim 43, further comprising the steps of:

q) refreshing the predetermined cumulative limit; and

r) authorizing transactions after said at least one credit account has been cleared.

45. (Original) The method of claim 44, further comprising the step of:

s) charging a user of the linked account instrument a fee for use of said at least one credit account.

46. (Original) The method of claim 42, further comprising the step of:

t) continuing to cease authorization of transactions attempted with the linked account instrument if a predetermined number of subsequent sweeps of said at least one cash account fail to find sufficient funds to satisfy the charges incurred through use of the linked account instrument.

47. (Original) The method of claim 41, further comprising the step of:

u) continuing to authorize linked account instrument transactions up to the predetermined cumulative limit against available credit on said at least one credit account, even if a first sweep of said at least one cash account finds insufficient funds to satisfy previous charges.

48. (Previously Added) The system of claim 1, wherein said authorization server is further configured to automatically withdraw funds from said at least one cash account to cover at least part of the charges incurred through use of the linked account instrument.

49. (Previously Added) The method of claim 24, further comprising automatically withdrawing at least part of the funds in said at least one cash account to satisfy at least part of the charges incurred through use of the linked account card.

50. (Previously Added) A method for accessing funds in at least one cash account, comprising the steps of:

a) interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account; and
b) performing at least one automatic withdrawal from said at least one cash account to satisfy at least part of the charges incurred through use of the linked account instrument.

51. (Previously Added) A system for processing electronic transactions, comprising:

a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn;

a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and

an authorization server, communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, performing sweeps wherein funds are withdrawn from said at least one cash account at predetermined times, and, if funds are not available from said at least one cash account, using the at least one credit account until the at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument.